



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2021-0802; FRL-9401-01-R6]**

### **Air Plan Approval; Texas; Control of Air Pollution from Visible Emissions and Particulate Matter**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) submitted by the State of Texas to EPA on October 22, 2021, that pertains to particulate matter standards and outdoor burning regulations. The revision allows volunteer firefighters to fulfill supervision requirements for the burning of trees, grass, leaves, branch trimmings, or other plant growth generated from specific residential properties at designated sites for consolidated burning of waste located outside of a municipality and within a county with a population of less than 50,000.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2021-0802, at <https://www.regulations.gov> or via email to [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and

should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact Randy Pitre, (214) 665-7299, [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov). While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Randy Pitre, EPA Region 6 Office, Infrastructure and Ozone Section, (214) 665-7299, [pitre.randy@epa.gov](mailto:pitre.randy@epa.gov). Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” or “our” means the EPA.

## **I. Background**

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA's National Ambient Air Quality Standards (NAAQS). These NAAQS are established under CAA section 109, and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead,

particulate matter (PM), and sulfur dioxide. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to EPA for approval and any changes a state makes to the approved SIP must also be submitted to the EPA for approval.

The EPA approved SIP for Texas includes Title 30 of the Texas Administrative Code (30 TAC), Chapter 111 (Control of Air Pollution from Visible Emissions and Particulate Matter), Subchapter B (Outdoor Burning). EPA approved Texas regulation 30 TAC 111.209(5) allows, under certain conditions, outdoor burning of waste at a site that is (1) designated for consolidated burning of waste generated from specific residential properties and (2) located outside of a municipality and within a county with a population of less than 50,000. Among the conditions is that (1) burning at the designated site is supervised by an employee of a fire department who is part of the fire protection personnel and (2) the fire department employee must notify the Texas Commission on Environmental Quality (TCEQ) 24 hours in advance of any scheduled supervised burn (30 TAC 111.209(5)(F)). Only trees, grass, leaves, branch trimmings, or other plant growth may be burned under this provision.

In response to Texas House Bill 2386 (85th Texas Legislature, 2017), TCEQ amended 30 TAC 111.209(5), to include volunteer firefighters, acting within the scope of their duties, to fulfill the supervision requirements for the burning of waste at these sites. EPA received the amendment as a SIP revision on October 22, 2021.

## **II. The EPA's Evaluation**

CAA section 110(l) provides that EPA shall not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. The outdoor burning allowed under 30 TAC 111.209(5) applies at designated sites for consolidated burning of

waste generated from specific residential properties which are located outside of a municipality and within a county with a population of less than 50,000.

El Paso County is the only Texas county designated as nonattainment for PM. However, the outdoor burning allowed under 30 TAC 111.209(5) would not be allowed in El Paso County, because the county's population is greater than 50,000.<sup>1</sup> Allowing volunteer firefighters, in addition to fire department employees, to supervise the burning and meet the supervision requirements at these sites is not expected to result in a change in emissions or ambient concentrations of a criteria pollutant or its precursors. Thus, the revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

### **III. Proposed Action**

We are proposing to approve revisions to the Texas SIP that pertain to particulate matter standards and outdoor burning regulations. The revision allows volunteer firefighters to fulfill supervision requirements for the burning of specific types of waste at designated sites for consolidated burning of wastes generated from specific residential properties located outside of a municipality and within a county with a population of less than 50,000. Specifically, we are proposing to approve a revision of 30 TAC 111.209(5) submitted on October 22, 2021.

### **IV. Incorporation by Reference**

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in Section III Proposed Action of this document. EPA has made, and will continue to make,

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<sup>1</sup> See <https://www.census.gov/quickfacts/fact/table/elpasocountytexas,US/PST045221> for the 2020 and 2021 population estimates for El Paso County.

these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6 office.

## **V. Environmental Justice Considerations**

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”<sup>2</sup> The EPA is providing additional analysis of environmental justice associated with this action for the purpose of providing information to the public.

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Texas.<sup>3</sup> The EPA then compared the data to the national average for each of the demographic groups. The results of the demographic analysis indicate that, for populations within Texas, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is significantly higher than the national average (62.4 percent versus 43.1 percent). Within people of color, the percent of the population that is Hispanic or Latino

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<sup>2</sup> See <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

<sup>3</sup> See the United States Census Bureau’s QuickFacts on Texas at <https://www.census.gov/quickfacts/fact/table/TX,US/PST045221>.

is higher than the national averages (40.2 percent versus 18.9 percent). The percentage of people living in poverty in Texas is higher than the national average (13.4 percent versus 11.6 percent). The percentage of people aged 25 and over with a high school diploma in Texas is slightly below the national average (84.4 percent versus 88.5 percent) and for the same age group, the percentage with a bachelor's degree or higher education is slightly lower than the national average (30.7 percent versus 32.9 percent).

Particulate matter contains microscopic solids or liquid droplets that are so small that when inhaled can cause serious health problems. Short and/or long-term exposure to elevated concentrations of PM emissions may contribute to the development of asthma and may potentially increase susceptibility to respiratory infections. People with asthma, as well as children and the elderly are generally at greater risk for the health effects of PM. As discussed in Section II of this action, the EPA proposes to approve the request to allow volunteer firefighters, in addition to fire department employees to supervise the burning and to meet the supervision requirement at the burn site. The PM emissions are not expected to result in impacts to the PM NAAQS because the emissions are temporary and the requirements limit the burn site area location to areas that do not show problems attaining or maintaining air quality with regard to PM emissions. Therefore, we believe that these existing open burning regulations and resulting emissions will not lead to disproportionately high or adverse human health or environmental health effects on communities with environmental justice concerns.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does

not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In

those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 8, 2022.

**Earthea Nance,**

*Regional Administrator, Region 6.*

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